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for an injunction. Decree for complainant, and defendant John T. Daniel appeals. Affirmed.

J. W. Topping and *John T. Daniel*, both of Cape Charles, for appellant.

John E. Nottingham, Jr., of Franktown, for appellees.

BRENARD MFG. CO. *v.* BROWN.

June 14, 1917.

[92 S. E. 850.]

1. Bills and Notes (§ 489 (5)*)—Pleading—General Issue.—In a suit on notes to the amount of \$600 given for a copyrighted advertising plan and certain goods and supplies to be used in connection therewith purchased under a written contract, the defense that independent of the special written contract there was a general agreement and under taking by the plaintiff to increase the defendant's sales for the year following the purchase of the advertising plan, and that, as no increase in fact resulted, there was a total failure of consideration, if sound, could be availed of under the general issue.

[Ed. Note.—For other cases, see Bills and Notes, Cent. Dig. §§ 1603-1610.* 2 Va.-W. Va. Enc. Dig. 495.]

2. Contracts (§ 204*)—Construction—Advertising.—Where, as a part of a special written contract for the sale of a general advertising plan and goods and supplies to be used in connection therewith, the seller gave his bond for a cash refund if the buyer's business was not increased to \$26,000, in the following year, which agreement was based on the buyer's false statements as to the amount of business he was doing, the buyer could not escape payment of the purchase-money notes on the theory of an independent general agreement and undertaking by the seller to increase the defendant's sales, although no increase in fact resulted.

[Ed. Note.—For other cases, see Contracts, Cent. Dig. § 916.* 3 Va.-W. Va. Enc. Dig. 401.]

3. Bills and Notes.— (§ 92 (1)*)—Consideration.—The buyer of a general advertising plan and goods and supplies to be used in connection therewith gave in payment notes to the amount of \$600. In an action on the notes undisputed testimony showed the sum of \$600 was a reasonable price. Held that, although the scheme contemplated giving away the articles of merchandise as premiums or prizes, as such articles and the services furnished by the plaintiff

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

in connection with the advertising scheme represented property and value, there was ample consideration for the notes.

[Ed. Note.—For other cases, see Bills and Notes, Cent. Dig. § 166.* 2 Va.-W. Va. Enc. Dig. 417.]

4. Contracts (§ 328 (1*))—Advertising Scheme—Defenses.—In an action for notes given for copyrighted advertising plan and goods and supplies to be used in connection therewith purchased pursuant to a contract which contained no provisions against sales to competitors of the buyer, the buyer will not be relieved from payment of the notes on the ground that he thought plaintiff treated him unfairly in selling a similar proposition to a nearby competitor, and that he understood the seller's salesman that no other similar advertising scheme would be placed within a radius of ten miles.

[Ed. Note.—For other cases, see Contracts, Cent. Dig. §§ 1571-1580, 1583, 1584.* 3 Va.-W. Va. Enc. Dig. 455.]

5. Appeal and Error (§ 662 (1*))—Review—Record.—The appellate court must dispose of the case on the record as it comes up.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. § 2850.* 1 Va.-W. Va. Enc. Dig. 505.]

6. Contracts (§ 350 (1*))—Advertising Scheme—Evidence—Sufficiency.—In an action on notes given for the purchase price of copyrighted advertising scheme and supplies, evidence held to entitle plaintiff to a judgment.

[Ed. Note.—For other cases, see Contracts, Cent. Dig. §§ 1819, 1822, 1823.* 3 Va.-W. Va. Enc. Dig. 459.]

Error to Circuit Court, Sussex County.

Action by the Brenard Manufacturing Company against C. M. Brown. Judgment for defendant, and plaintiff brings error. Reversed, and judgment ordered for plaintiff in Supreme Court.

M. G. Mason, of Sussex C. H., and *E. A. Kennedy*, for plaintiff in error.

J. N. Sebrell, Jr., of Norfolk, for defendant in error.

GEHL *v.* BAKER.

June 14, 1917.

[92 S. E. 852.]

1. Assumpsit, Action of (§ 20*)—Pleading—Waiver.—A plaintiff may either expressly or by implication, waive defendant's compliance with Code 1904, § 3286, providing that in an action of assumpsit no plea in bar shall be received or inquiry of damages made un-

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